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2166

DEC 27 2001 PTO/SB/21 (08-00)

Approved for use through 10/31/2002 DATE FOR FILING

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Application Number	09/802,546
Filing Date	03/09/2001
First Named Inventor	Debi Whitson
Group Art Unit	2166
Examiner Name	
Attorney Docket Number	Whitson.1003

Total Number of Pages in This Submission

ENCLOSURES (check all that apply)

- ☐ Fee Transmittal Form
- ☐ Fee Attached
- ☐ Amendment / Reply
- ☐ After Final
- ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Response to Missing Parts' Incomplete Application
- ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53

- ☐ Assignment Papers (for an Application)
- ☐ Drawing(s)
- ☐ Licensing-related Papers
- ☐ Petition
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, Revocation Change of Correspondence Address
- ☐ Terminal Disclaimer
- ☐ Request for Refund
- ☐ CD, Number of CD(s) _____

- ☐ After Allowance Communication to Group
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☐ Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
- ☐ Proprietary Information
- ☐ Status Letter

☒ Other Enclosure(s) (please identify below):Notice of Withdrawal
of Counsel
Postcard

Remarks

Original and two copies of the
Notice of Withdrawal of Counsel are enclosed.**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**Firm
or
Individual name

MURPHEY & MURPHEY, A.P.C.

John J. Murphey

Signature

Date

12/17/01

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date

12/17/01

Typed or printed name

Lois Murphey

Signature

Lois Murphey

Date

12/17/01

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231



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DEC 27 2001

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

SERIAL NUMBER: 09/802,546)

Filing Date: 03/09/2001)

Inventor: Debi Whitson)

For: PROCESS OF INTERFACING A
PATIENT INDIRECTLY WITH THEIR
OWN ELECTRONIC MEDICAL
RECORDS)

Examiner: (unknown)

Group Art Unit: 2166

NOTICE OF WITHDRAWAL
OF COUNSEL

Box No Fee
Commissioner of Patents
and Trademarks
Washington, D. C. 20231

Dear Sir:

I hereby certify that this correspondence is
being deposited with the United States Postal
Service as first class mail in an envelope
addressed to: Commissioner of Patent and Trade-
marks, Washington, D.C. 20231, on

DEC. 17, 2001

(Date of Deposit)

LOIS MURPHY

(Name of Person mailing paper)

Lois Murphy

(Signature)

12/17/01

(Date of Signature)

The undersigned, being the attorney of record in the within case, hereby gives notice,
in an original and 2 copies, of his unconditional withdrawal as attorney of record in this
matter. The reason for withdrawing is the total failure of the applicant to pay for the services
of the undersigned.

Enclosed is a copy of the Fee Agreement between the applicant and her counsel of
record. On page 3 is a paragraph that states ("I" referring to Ms. Whitson):

SERIAL NUMBER: 09/802,546

Examiner: (unknown)

Filing Date: 03/09/2001

Group Art Unit: 2166

Inventor: Debi Whitson

December 17, 2001

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3. I made a down-payment of \$2,000 on 8-11-2000, and will pay the balance of \$2,755.00 (plus any extra for claims and/or sheets of drawings) at the rate of \$250.00 per month, beginning the month the application is filed in the United States Patent Office, and continuing the first day of each and every month thereafter until the balance is paid-in-full.

On page 4 of the same Fee Agreement, a paragraph states:

Noncompliance by me of the terms set forth in this Agreement allows Mr. Murphey to withdraw as my Attorney of Record in this matter. Notwithstanding Mr. Murphey's withdrawal, I understand I remain obligated to pay his fees required under the terms of this Fee Agreement and to reimburse him for all costs advanced.

The applicant has not made a payment except for the \$2,000 down-payment, despite numerous letters requesting her to do so. The last known address of applicant is:

Ms. Debi Whitson
26005 East 317
Harrison, MO 64701

There has been no Official Action received to date on this patent application. A copy of this Notice of Withdrawal of Counsel was served on applicant on December 17, 2001 by depositing a copy of same in the United States mail, postage prepaid, by Certified Mail. Applicant has refused all previous Certified Mail and a copy of same is

SERIAL NUMBER: 09/802,546

Examiner: (unknown)

Filing Date: 03/09/2001

Group Art Unit: 2166

Inventor: Debi Whitson

December 17, 2001

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also being served upon her by regular U.S. Mail.

Dated: December 17, 2001

Respectfully submitted,



John J. Murphey, Reg. No. 24,896

Present Attorney for Applicant

Pacific Center One, Suite 260

701 Palomar Airport Road

Carlsbad, California 92009-1027

Telephone: (760) 431-0091

Facsimile: (760) 431-9441

Jmurphey@mmiplaw.com - e-mail

Z:\Clients\Whitson, Debbie\WITHDRAWAL OF COUNSEL.wpd

Murphey & Murphey

A Professional Corporation

INTELLECTUAL PROPERTY LAW AND LITIGATION
AND RELATED TECHNOLOGY DEVELOPMENT.
PATENTS • COPYRIGHTS • TRADEMARKS
BUSINESS, CORPORATE AND BANKRUPTCY MATTERS

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July 20, 2000

Ms. Debbie Whitson
26005 East 317
Harrisonville, MO 64701
Tel. 816.293.5305

I, Debbie Whitson, herewith retain JOHN J. MURPHEY, United States Patent Office Registration Number 24,896, as my attorney to represent me in the preparation and filing of a United States Utility Patent Application relating to computer process based upon the disclosure I have presented to him. I agree and promise to pay to Mr. Murphey a **TOTAL SUM** of \$4,755.00 comprising:

Drawings (estimated):	\$ 510.00 (\$170.00/per sheet, 3 sheets estimated)
Government filing fees:	\$ 345.00 (small entity) (for 20 claims)
Attorney fees:	<u>\$ 3,900.00</u>
TOTAL SUM:	\$ 4,755.00

Mr. Murphey has explained that the **TOTAL SUM**, as stated above, includes a non-refundable retainer of \$200.00, but does not include Murphey & Murphey, A.P.C.(hereinafter M&M), support staff services, any costs, nor any matters outside the scope of this agreement. Claims in excess of 20 and drawings in excess of 3 sheets require more money and I agree to pay it as soon as notified. I agree to pay for any additional services, according to the following rate schedule:

HOURLY RATES

John J. Murphey, Attorney	\$240/hr.
Support Staff	\$ 75/hr.

Ms. Debbie Whitson
July 20, 2000
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These rates are not set by statute, but are the customary rates charged by M&M for its services. I agree that these rates were explained to me and negotiated between us, in good faith. These rates are subject to change without notice; however, all reasonable steps will be taken to notify me in advance of any change.

I agree to pay all costs associated with the filing of this application. I understand costs include, but are not limited to, staff time, photocopies, postage (including Express mail), telephone charges (local, long distance and/or foreign), facsimile transmissions (local, long distance and/or foreign), filing fees, recording fees, courier fees, etc. Prices for the most commonly charged costs appear below:

TABLE OF COSTS

Photocopies (in-office)	\$.25/page
Fax - per page/local area	\$ 1.00
Fax - per page/long distance	\$ 2.50
Fax - per page/foreign	\$ 5.00
Postage	\$ (as incurred)
Express Mail	\$11.75 per envelope
Mileage	\$.31/mile

Mr. Murphey has explained that he logs in and returns all telephone calls made to his office, and that an answering machine is available for messages when the office is closed. Charges for calls concerning development of this application are included in this Agreement. Telephone calls concerning any other matter are outside the scope of this Agreement and are charged in increments of one-tenth of an hour, at Mr. Murphey's hourly rate of \$240.00. I agree to pay for these charges, should this event arise.

I understand that the **TOTAL SUM** stated above is not the **FINAL SUM** that I will ultimately pay by the time this application for Letters Patent has concluded.

I recognize that any changes or additions to the disclosure may result in increased attorney fees and/or filing fees and I agree, upon notification, to these additional fees being added to the **TOTAL SUM**. It has also been explained to me that the filing fee is subject to change by the United States Government without notice, and I agree to pay any such increase, upon notification, outside of the **TOTAL SUM**, and to remit payment as soon as notified thereof. Further, it has been explained to me that the patent prosecution process is very subjective, that the patent examiner has broad discretion to issue or refuse to issue

Ms. Debbie Whitson
July 20, 2000
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a patent, that there is no guarantee a patent will issue from the application, and that Mr. Murphey has made no such guarantee.

Finally, the provisions of 35 U.S.C. §102, 35 U.S.C. §103 and Rule 56 have been explained to me and a copy of each of them is attached to this Agreement.

PAYMENT OPTIONS

1. I made payment-in-full of \$ _____ on _____, 2000, receipt of which is hereby acknowledged by Attorney Murphey.

2. I made a down-payment of \$ _____ on _____, 2000 and will pay the balance of \$ _____ when my application is in final form ready for execution, by me, for filing in the United States Patent Office.

3. I made a down-payment of \$ ^{two thousand} 2000⁰⁰ on 8 11, 2000, and will pay the balance of \$ 2,755.00 (plus any extra for claims and/or sheets of drawings) at the rate of \$250.00 per month, beginning the month the application is filed in the United States Patent Office, and continuing the first day of each and every month thereafter until the balance is paid-in-full.

Mr. Murphey has explained that all payments are due upon receipt of his invoice, and neither interest nor carrying charges will be assessed so long as payment is received within 25 days of the date on the invoice. As a convenience, M&M accepts credit card payments using Visa, MasterCard and Discover Cards. The use of a credit card often includes the ability to dispute payments made with that card, pursuant to certain dispute resolution rules and procedures provided in the agreement I have with my credit card company. Additionally, M&M's ability to receive payment of its fees and costs via credit card is pursuant to a form of merchant services agreement which contains its own rules and procedures for dispute resolution, including rules and procedures parallel to those associated with my credit card. By signing this Fee Agreement, I agree to waive any and all rights I may have to utilize the dispute resolution rules and procedures provided with my credit cards and those related to M&M's merchant services agreement. My signature further confirms that I will rely exclusively on the dispute resolution procedures provided in this written Fee Agreement with M&M.

I understand that my failure to pay three (3) consecutive invoices results in the unpaid balance becoming immediately due and payable. Should the balance become due for failure to pay the three consecutive invoices, it is agreed that the unpaid balance shall carry

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10% annual interest, compounded annually.

I further understand that this **TOTAL SUM** does not include attorney fees for prosecution of the application after it is filed in the Patent Office, i.e., responding to Office Actions, costs of drawing changes, preparing and filing continuations and continuations-in-part applications and filing appeals/interference actions, or other government charges such as final issuance fee and/or maintenance fees.

It has been further explained that the patent prosecution process is very subjective, that the trademark examiner has broad discretion to issue or refuse to issue a registration, that there is no guarantee a registration will issue from the application, and that Mr. Murphey has made no such guarantee.

I further understand that even though Attorney Murphey can, and does, provide services to foreign file patent applications, none of these services is included in this Fee Agreement. If I elect to foreign filing, a new Fee Agreement for foreign filing services will be executed between us.

Noncompliance by me of any of the terms set forth in this Agreement allows Mr. Murphey to withdraw as my Attorney of Record in this matter. Notwithstanding Mr. Murphey's withdrawal, I understand I remain obligated to pay his fees required under the terms of this Fee Agreement and to reimburse him for all costs advanced.

I may discharge Mr. Murphey at any time by written notice, effective when received by him. He will provide no further services for me, nor incur any further costs on my behalf. I will pay all costs and/or fees involved in the photocopying of my file for transfer to me, or to another attorney whom I have retained, and if required, will immediately execute a substitution-of-attorney form.

If a dispute arises between Mr. Murphey and me under this Agreement, and he files suit in any court other than small claims court, I will have the right to stay that suit by timely electing to arbitrate the dispute under Business and Professions Code §§ 6200--6206, in which event Mr. Murphey must submit the matter to such arbitration. I agree to venue in North County, San Diego.

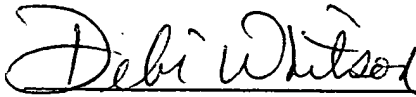
This Agreement will not take effect and Mr. Murphey has no obligation to provide his services until I have executed and returned a signed copy of this Agreement to him, along with my payment as stated above. Even if this Agreement does not take effect, I will pay Mr. Murphey for costs and the reasonable value of any services performed on my

Ms. Debbie Whitson
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behalf.

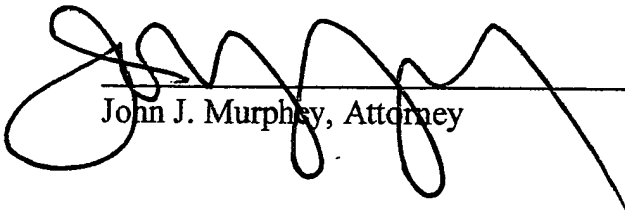
I have read and understand the foregoing terms and conditions set forth above and agree to them, as of the date Mr. Murphey first provided services.

Date: 8/8, 2000



Debbie Whitson, Inventor and Client
Debi

Date: 7-24, 2000



John J. Murphey, Attorney

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July 20, 2000
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**35 U.S.C. §102. CONDITIONS FOR PATENTABILITY; NOVELTY
AND LOSS OF RIGHT TO PATENT**

A person shall be entitled to a patent unless--

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2) and (4) of §371(c) of this title [35 USC §371(c)(1), (2), (4)] before the invention thereof by the applicant for patent, or

(f) he did not himself invent the subject matter sought to be patented, or

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

35 U.S.C. §103. CONDITIONS FOR PATENTABILITY; NON-OBVIOUS SUBJECT MATTER

A patent may not be obtained though the invention is not identically disclosed or described as set forth in §102 of this title [35 USC §102], if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of §102 of this title [35 USC §102(f), (g)], shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

**SECTION 1.56 DUTY TO DISCLOSE INFORMATION MATERIAL TO
PATENTABILITY.**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(i) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(3) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(4) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

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A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(5) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(i) Each inventor named in the application;

(ii) Each attorney or agent who prepares or prosecutes the application; and

(iii) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(iv) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.